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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 138

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES, *Petitioner*

v.

ASSOCIATION FOR THE BENEFIT OF NON-CONTRACT EMPLOYEES, *Respondent*

No. 139

UNITED AIR LINES, INC., *Petitioner*

v.

NATIONAL MEDIATION BOARD, ET AL., *Respondents*

No. 369

NATIONAL MEDIATION BOARD, ET AL., *Petitioners*

v.

ASSOCIATION FOR THE BENEFIT OF NON-CONTRACT EMPLOYEES, *Respondent*

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

CONSOLIDATED BRIEF OF THE RAILWAY LABOR EXECUTIVES' ASSOCIATION, AMICUS CURIAE

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PRELIMINARY STATEMENT—INTEREST OF THE AMICUS CURIAE

The Railway Labor Executives' Association (Association), on whose behalf this brief as *amicus curiae* is presented, is a voluntary unincorporated association with which are affiliated through their chief executives twenty-three national and international railroad labor

organizations that are the duly authorized representatives under the Railway Labor Act of the vast majority of the nation's railroad employees. In addition, some of these organizations are also the duly authorized representatives under the Railway Labor Act of employees of various air carriers, including employees of United Air Lines (United). The names of these individual organizations are as follows:

American Railway Supervisors' Association
American Train Dispatchers' Association
Brotherhood of Locomotive Firemen and Enginemen
Brotherhood of Maintenance of Way Employes
Brotherhood of Railroad Signalmen
Brotherhood of Railroad Trainmen
Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes
Brotherhood Railway Carmen of America
Brotherhood of Sleeping Car Porters
Hotel and Restaurant Employees and Bartenders International Union
International Association of Machinists
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers
International Brotherhood of Electrical Workers
International Brotherhood of Firemen and Oilers
International Organization, Masters, Mates and and Pilots of America
National Marine Engineers' Beneficial Association
Order of Railway Conductors and Brakemen
Railroad Yardmasters of America
Railway Employes' Department, AFL-CIO
Seafarers' International Union of North America
Sheet Metal Workers' International Association
Switchmen's Union of North America
The Order of Railroad Telegraphers

In accordance with the Rules of this Court the consent of all parties to the cases under review has been obtained for the filing of this brief by the Association as *amicus curiae* and such consents have been filed with the Clerk of the Court.

Three questions of vital importance to the Association concerning the administration of the Railway Labor Act by the National Mediation Board (Board) are presented for decision. In our judgment these questions are:

1. Whether the District Court had jurisdiction to enjoin the National Mediation Board from conducting a representation election under Section 2, Ninth of the Railway Labor Act because the Board (a) declined to change its form of ballot to be used in the representation election so as to include thereon a space for employees to affirmatively vote against any representation; and (b) denied a hearing for the purpose of redetermining the composition of an already established craft or class of employees among whom the representation election would be held.

2. Assuming, *arguendo*, jurisdiction to exist, whether the National Mediation Board violated any statutory requirement or abused its discretion under Section 2, Ninth of the Railway Labor Act in declining to change the form of the ballot or hold the hearing as aforesaid.

3. Whether an air carrier has standing under the Railway Labor Act to challenge the National Mediation Board's craft or class determination or the form of ballot which it uses in employee representation elections.

The Association believes that the separate opinion of Circuit Judge Wright of the court below correctly in-

terpreted the law applicable to these question (R. 178-183)[1] * and in support of that position submits the following argument.

I

Determinations of the National Mediation Board as to the Form of the Ballot to be Used in Representation Elections or the Composition of the Craft or Class of Employees Among Whom the Election Shall Be Held Were Not Within the Jurisdiction of the District Court

The question of jurisdiction which seems to us of initial importance was given scant attention by the court below except in the separate dissenting opinion of Circuit Judge Wright. The majority of the Court of Appeals simply adopted the opinion of District Judge Youngdahl and let it go at that (R. 177) despite the fact that briefs filed by the Government and the Brotherhood of Railway and Steamship Clerks (Brotherhood) pointedly called the attention of the Court of Appeals to the apparent conflict between the District Court's decision and decisions of this Court dating back to 1943 as well as a long line of decisions by the Court of Appeals itself denying jurisdiction under circumstances comparable to those here involved.

In 1943 this Court held in *Switchmen's Union of North America, et al.* v. *National Mediation Board, et*

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[1] In this separate opinion Judge Wright concurred in the decision of the Court of Appeals to affirm the District Court's dismissal of the complaint by United Air Lines (No. 139), but dissented from the majority affirming the District Court's judgment by a different judge in the cases involving the Association for the Benefit of Non-Contract Employees (ABNE), Nos. 138 and 369.

* All references to the Record of Cases No. 138 and 369 involving respondent ABNE will be designated "R." followed by the page reference. Reference to the Record in Case No. 139 involving petitioner United Air Lines will be designated as "United R." followed by the page reference.

al., 320 U.S. 297, 305 that it was beyond the jurisdiction of a district court to review or question the interpretation by the National Mediation Board of the meaning of the word "craft" as used in Section 2, Ninth of the Railway Labor Act, 45 U.S.C. § 152, Ninth. In that case a railroad union which had lost an election sought to attack the certification issued by the Board on the ground that the Board had violated the Railway Labor Act by defining the craft or class in which the election was conducted on a carrier-wide rather than a divisional basis. In holding that the Board's statutory interpretation was not subject to judicial review this Court reviewed at length the legislative history of the Railway Labor Act and particularly Section 2, Ninth and said that if Congress had desired to implicate the federal judiciary and to give to the federal courts the final say "on any aspect of the problem", it would have made such intention plain (Id. p. 303). On the contrary, it said that the dispute was to reach its last terminal point when the Board's determination was made and that there "was to be no dragging out of the controversy into other tribunals of law." (Ibid. p. 305.)[2] Two other decisions of this Court decided the same day as the *Switchmen's* case, *General Committee* v. *Missouri-K.T.R. Co.*, 320 U.S. 323 and *General Committee* v. *Southern Pacific Co.*, 320 U.S. 338, and a case decided the next month, *Brotherhood of Railway and Steamship Clerks, Etc.*, v. *United Transport Service Employees*, 320 U.S. 715, supplemented and reinforced the jurisdictional decision in the *Switchmen's* case.

[2] An interesting point of this decision is the fact that the issue of jurisdiction had not been raised by the Board or any of the parties in the *Switchmen's* case before the District Court, the Court of Appeals, or this Court. (See *Switchmen's Union of N. America* v. *National Mediation Board*, 135 F. 2nd 785 (D.C. Cir., 1943). It was raised by this Court itself and the parties were directed to brief and argue it. (See 319 U.S. 737.)

The holding that determinations of the National Mediation Board under Section 2, Ninth of the Railway Labor Act were not subject to judicial review has been followed consistently since 1943, with the sole exception of the decisions here under review, by the lower federal courts including the court below. In none of the following cases has the Court granted review to reconsider its holding in the *Switchmen's* case although frequently petitioned to do so. *United Transport Service Employees of America, et al.* v. *National Mediation Board, et al.*, 141 F.2d 724 (D.C. Cir., 1944); *National Federation of Railway Workers, et al. v. National Mediation Board, et al.*, 141 F.2d 725 (D.C. Cir., 1944); *Kirkland* v. *Atlantic Coast Line R. Co.*, 167 F.2d 529 (D.C. Cir., 1948); *United Transport Service Employees of America, et al.* v. *National Mediation Board, et al.*, 179 F.2d 446 (D.C. Cir., 1949); *Rose, et al.* v. *Brotherhood of Railway and Steamship Clerks*, 181 F.2d 944 (4th Cir., 1950) *cert. den.* 340 U.S. 857; *Brotherhood of Railway and Steamship Clerks* v. *Atlantic Coast Line R. Co.*, 201 F.2d 36 (4th Cir., 1950); *Airline Dispatchers Association, et al.* v. *National Mediation Board, et al.*, 189 F.2d 685 (D.C. Cir., 1951) *cert. den.* 342 U.S. 849; *Decker, et al.* v. *Linea Aeropostal Venezolana, et al.*, 258 F.2d 153 (D.C. Cir., 1958);[3] *Airline Stewards and Stewardesses Association*

[3] In the *Decker* case, paragraph 8 of the complaint in the District Court raised the identical question here involved of the form of ballot used by the National Mediation Board in representation elections and the appeal from the District Court's decision dismissing the complaint specifically raised the issue. In that case the lower court held that under such circumstances the prohibition in the *Switchmen's Union* case is applicable (258 F. 2d at 154); in the cases under review it held the opposite without explanation or reference to its decision in *Decker* although the case was called to its attention.

v. *National Mediation Board, et al.*, 294 F.2d 911 (D.C. Cir., 1961) *cert. den.* 369 U.S. 810; *UNA Chapter, Flight Engineers' International Association* v. *National Mediation Board, et al.*, 294 F.2d 905 (D.C. Cir., 1961) *cert den.* 368 U.S. 956; *WES Chapter, Flight Engineers' International Association* v. *National Mediation Board, et al.*, 314 F.2d 234 (D.C. Cir., 1962); *Flight Engineers' Inter. Ass'n.* v. *Eastern Airlines, Inc.*, 311 F.2d 745 (2d Cir., 1963) *cert. den.* 373 U.S. 924;

In the case of *Rose* v. *Brotherhood of Railway and Steamship Clerks*, 181 F.2d 944 (4th Cir., 1950) *cert. den.* 340 U.S. 857, the Court of Appeals had occasion to consider the same type of question here raised with respect to the form of the ballot used by the National Mediation Board. In that case a group of employees had sought to intervene in opposition to the Brotherhood's court suit to compel a rail carrier to meet and treat with it as required under the Railway Labor Act after certification by the National Mediation Board. These employees claimed that the form of the ballot used in the representation election had denied them an opportunity to vote against representation (p. 945). The district court had refused the intervention and the Court of Appeals sustained it, Chief Judge Parker stating (p. 946):

> "In the light of the decisions of the Supreme Court there can be no doubt that the effect of this statute was to vest in the Mediation Board exclusive jurisdiction over the certification of bargaining agents, the determination of bargaining units and the classification of employees for the purposes of bargaining. And it is equally clear that the exercise of discretion by the Board with respect to such matters is not subject to review by the courts."

The same issue here presented as to the validity of the ballot prescribed by the National Mediation Board became involved recently in the case of *Droggos* v. *National Mediation Board*, 227 F.Supp. 61 (N.D. Ohio, 1963). In denying an injunction sought on the grounds that the Board's ballot was invalid because it did not contain a blank to vote against any representation, the Court held that it was beyond its jurisdiction to review the Board's exercise of discretion under Section 2, Ninth of the Railway Labor Act. It also had before it but refused to follow the decision of the District Court here under review. On this point it said (p. 62):

> "Despite a contrary holding in Association for the Benefit of Non-contract Employees v. National Mediation Board, 218 F. Supp. 114, D.C., (1963), it is my view that no constitutional right, nor any fundamental right has been denied to the plaintiffs. I find that the Board, in selecting the form of ballot, was exercising the discretion committed to it by the statute to establish the rules to govern the election. This discretionary action is not reviewable under Switchmen's Union of North America v. National Mediation Board, supra, General Committee of Adjustment of Brotherhood of Locomotive Engineers etc. v. Missouri-Kansas-Texas Railroad Co., 320 U.S. 323, 64 S.Ct. 146, 88 L.Ed. 76 (1943), and Rose v. Brotherhood of Railway and Steamship Clerks, supra."

In the face of the foregoing line of authority it is difficult for us to perceive how the District Court reached a contrary conclusion and even more difficult to understand why the Court of Appeals sustained it without opinion discussing the jurisdictional issue. Apparently Judge Youngdahl of the District Court relied principally upon the decision of *Airline Dispatchers Association* v. *National Mediation Board*, 189

F.2d 685 (D.C. Cir., 1951) *cert. den.* 342 U.S. 849 and the decision of this Court in *Leedom* v. *Kyne*, 358 U.S. 184 (1958), concluding that these cases were applicable to the issues presented rather than this Court's decision in *Switchmen's Union* because the question on the form of the ballot raised a serious issue of statutory construction (R. 142-143, and 169). We submit that these decisions have been misapplied to the action taken by the Board in the instant cases.

For example, the *Dispatchers* case raised the issue of whether the Board had the statutory power to investigate a dispute which involved employees outside the continental United States. The Court of Appeals for the District of Columbia Circuit held that the District Court had jurisdiction to review this question. Thus, the issue presented and decided was not the manner in which the Mediation Board performed its statutory functions under Section 2, Ninth of the Railway Labor Act, but rather the question of whether the Board had any power to act at all. There is manifestly a clear distinction to be drawn between judicial review of statutory authority to act at all and review of the manner in which admitted statutory authority is exercised. Simply characterizing the form of the ballot prescribed by the Board incident to its conduct of a

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[4] Insofar as the hearing on the craft or class issue is concerned, neither the District Court nor the Court of Appeals made any reference to the prayer of the complaint (R. 9) that the District Court order the Mediation Board to conduct a hearing to re-determine the appropriate composition of the craft or class and afford ABNE status as a party in interest at such hearing. In the permanent injunction issued by Judge Youngdahl, however, the Board was directed to further consider this question in the light of the Court's opinion and order with respect to the form of the ballot issue (R. 171).

representation election as amounting to an issue of statutory construction clearly does not establish jurisdiction which has been foreclosed by Congress "on any aspect of the problem" of certification proceedings under Section 2, Ninth.

Similarly, as stated by Circuit Judge Wright in his dissenting opinion in the court below (R. 182) "There is no *Leedom* v. *Kyne*, 358 U.S. 184 (1958), question here. It is not even suggested that the Board has acted contrary to a plainly and expressly defined statutory duty, nor has the Board here conceded that it has so acted, as in *Leedom*."[5]

Since the Court of Appeals merely affirmed on the basis of the opinion rendered by Judge Youngdahl of the District Court, there is no further light to be shed by reference to the Circuit Court's decision on the issue of jurisdiction.

Turning to the contentions advanced by ABNE and United, the entire argument seems to be a claimed deprivation of statutory rights which in their view rose to constitutional dimensions because of the Board's refusal to provide on its ballot a place to affirmatively vote "no representation". But neither United nor ABNE are able to cite any provision of the Railway Labor Act which gives an employee a right to affirm-

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[5] This Court has emphasized at the present term of Court that *Leedom* v. *Kyne* represents a narrow exception to preclusion of court review of certification proceedings where the National Labor Relations Board "attempted exercise of power that has been specifically withheld", that such exception must be confined within the "painstakingly delineated procedural boundaries of Kyne", and that it may not "be extended to permit plenary District Court review of Board orders in certification proceedings . . ." *Boire* v. *Greyhound Corporation*, 376 U.S. 473, 481 (1964).

atively vote for "no representation". We believe that what has already been stated above with respect to misplaced reliance by the lower courts on *Airline Dispatchers Association* v. *National Mediation Board,* 189 F.2d 685 (D.C. Cir., 1951) *cert. den.* 342 U.S. 849 and *Leedom* v. *Kyne,* 358 U.S. 184 (1958) apply with equal force to these arguments of respondents in support of jurisdiction to review the Board's form of ballot used in certification proceedings under Section 2, Ninth of the Railway Labor Act.

With respect to the companion issue of the Board's denial of a hearing to re-determine the craft or class, little need be added to the issue of jurisdiction to what has already been stated on the question regarding the form of the ballot. It has already been mentioned above that the District Court in its order of injunction remanded this craft or class question to the Board for further consideration in the light of its decision that the statute required an opportunity by the employees to vote for "no representation". Despite the manner in which this "invitation" is extended by the District Court, it quite plainly constitutes the assertion of jurisdiction to review the manner in which the Board decides whether it is proper or improper to hold a hearing for the purpose of re-determining the composition of an already established craft or class of employees. As such, the District Court's order runs directly contrary to all the established precedents above cited and opens the door to judicial review of Board determinations as to the composition of a craft or class of employees.

II.

Jurisdiction Aside, the Action of the National Mediation Board in Denying the Requested Change in the Form of the Ballot and Declining to Re-determine the Craft or Class Constituted a Reasonable Exercise of Its Discretion Under Section 2, Ninth of the Railway Labor Act.

Even if this Court had not decided *Switchmen's Union* in 1943 and foreclosed from that time forward judicial review of representation proceedings of the Board under Section 2, Ninth of the Railway Labor Act, we submit that the Board's actions here under review constituted a reasonable exercise of judgment on subject-matter committed by Congress to its discretion and should not have been enjoined by the District Court.

The statute contains no express language instructing the Board how to resolve representation disputes under Section 2, Ninth. On the contrary, it does not even require that the Board conduct a representation election but gives the Board the freedom to utilize any "appropriate method" to determine the names of duly designated and authorized representatives of employees. Pursuant to this discretion, the Board has found it appropriate in a number of representation cases to certify bargaining representatives on the basis of signed authorization cards instead of holding an election entailing the use of a ballot.[8] Even prior to the *Switchmen's* decision such alternative method was expressly upheld as a proper exercise of the

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[8] For example, see Eleventh Annual Report of the National Mediation Board (1945) p. 14 where the Board states: "Certifications for 146 crafts were based on the results of secret elections, while 35 crafts were certified on the basis of checks of signed authorizations." Several recent decisions include NMB Case No. R. 3704 (Oct. 20, 1964) and NMB Case No. R. 3710 (Dec. 7, 1964).

Board's *discretion*, not that of the courts, *Brotherhood of Railway & Steamship Clerks* v. *Virginian R. Co.*, 125 F.2d 853, 857 (4th Cir., 1942). Since the freedom of choice is the Board's to determine representation through a secret ballot or by "any other appropriate method", such statutory grant of discretion clearly negates any restrictions, express or implied, on the form of the ballot to be used by the Board.

Consideration of other sections of the Railway Labor Act results in the same conclusion. Section 2, Fourth, 45 U.S.C. § 152, Fourth raises the question of whether representation elections should be determined by majority vote of those participating in the election regardless of the number of voters eligible to participate—which is the policy and practice of the National Labor Relations Board[7]—or only when a majority of those eligible actually participate and cast valid ballots in a craft or class election, which is the established practice of the Mediation Board. Because Section 2, Fourth provides that "The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act", the Mediation Board has consistently determined that a representative may be selected only through the participation of a majority of a craft;[8] otherwise the Board will not certify a representative. *Radio Officers Union* v. *National Mediation Board*, 181 F.2d 801 (D.C. Cir., 1950).

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[7] See RCA Manufacturing Co., 2 NLRB 173-177.

[8] Once a majority of the craft participate and cast valid ballots, however, the selection of a representative is by plurality vote. This interpretation of the statute was unanimously upheld by this Court in *Virginian Ry. Co.* v. *System Federation No. 40*, 300 U.S. 515, 559-560 (1937).

Other sections of the Railway Labor Act provide no basis for the conclusion that the Board's form of ballot is in excess of its statutory authority or an abuse of its discretion. On the contrary, the Act speaks throughout in terms of *representatives* of employees designated and authorized to confer, negotiate, make, and maintain agreements. In the *Virginian* case, *supra,* this Court recognized that the Act was "aimed at securing settlement of labor disputes by inducing collective bargaining with the true representative of the employees and by preventing such bargaining with any who do not represent them" (300 U.S. 515 at 548) and it expressly stated that the Act is "dependent for its operation upon the selection of representatives." (P. 560.)[9] See also this Court's reaffirmation of the observation in *International Machinists* v. *Street,* 367 U.S. 740, 760 (1961).

In the light of such a pervading philosophy of the Act to encourage the selection of employee bargaining representatives, the Board's refusal to expressly invite rejection of a representative on its ballot is consistent with, not in opposition to, the statutory purpose of the Railway Labor Act. In this respect it differs markedly from the procedure of the National Labor Relations Board whose ballot provides for a vote against representation (United R. 101) and whose statute, as amended in 1947, expressly preserves the right of employees to refrain from collective bargaining through representatives, 29 U.S.C. § 157. Thus, the practices of the Mediation Board and Labor Board differ just

[9] Respondent ABNE has stated unequivocally that it does not want its name on the ballot; that it does not wish to be a bargaining representative; and that its intent is to dissolve after it has served its purpose which can only be to see to it that the employees shall have no bargaining representative (R. 111).

as do the statutes under which each functions.[10] Each has followed different election procedures from the inception of their administration of the two statutes.[11] As pointed out by Board Member Francis A. O'Neill, Jr., in his affidavit before the District Court, the form of the ballot challenged by United and ABNE was formulated upon the creation of the National Mediation Board in 1934, has been utilized in conducting over 3400 representation elections among various crafts or classes of employees since that date, and is substantially the same form of ballot authorized by the United States Railroad Labor Board in 1921 (R. 161). As observed by Circuit Judge Wright in his dissenting opinion below:

> "In the 43 years since 1921, Congress has not indicated the slightest disapproval of the Board's election machinery—including its ballot. Moreover, no court, except the District Court here, in the ABNE case but *not* in the United case, has found this ballot unlawful."[12]

Finally, the legislative history of the 1934 amendments to the Railway Labor Act, of which Section 2,

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[10] *Brotherhood of R.T.* v. *Chicago R. & I. R. Co.*, 353 U.S. 30, 31 (fn. 2), 1957.

[11] *RCA Manufacturing Co.*, 2 NLRB 173-177; *Interlake Iron Corp.*, 4 NLRB 55, 61.

[12] Judge Wright dropped a footnote explaining that "The ABNE and United Cases were heard by different District Court judges." As a matter of fact, although the majority opinion of the court below states that it assumes that the United case was dismissed on the ground of lack of standing on the part of United (R. 177), it is equally credible to assume that the District Court dismissed the United case for lack of jurisdiction since this was the first ground of the motion (United R. 110) which Judge Matthews granted (United R. 144).

Ninth was a part, expressly confirms the fact that Congress intended to leave election rules and questions which might arise in the conduct of representation elections to the Board's discretionary determination. *Hearings before The Committee on Interstate and Foreign Commerce on H.R. 7650*, 73d Cong., 2d Sess., pp. 34-35 (1934). Certainly the form of a ballot and the composition of the craft of employees entitled to participate are well within the intended framework of such discretion.

III.

United Air Lines Lacks Standing Under the Railway Labor Act to Challenge the Mediation Board's Craft or Class Determination Or Its Form of Ballot

The majority of the lower court affirmed the District Court's dismissal of United's action to enjoin the Board's representation election. It did so on its "assumption" that the dismissal was on the ground of lack of standing on the part of United[13] which it decided "not to disturb" because the issue was a "close question . . . about which there is a dearth of authority" and because its decision in the ABNE cases "affords the relief concerning the form of the ballot which United sought." (United R. 148.)

Although Circuit Judge Wright concurred in the District Court's dismissal of United's suit, he did so on grounds additional to those set forth in the majority opinion. His dissenting opinion as a whole (United R. 149-154) demonstrates that in his view the District Court was without jurisdiction to entertain United's complaint under this Court's holding in the *Switchmen's* case, *supra*, and on the specific question of lack of standing he states as follows (United R. 153):

[13] But see footnote 12, supra.

> "United Air Lines lacks standing to challenge the Board's action. The purpose of the Railway Labor Act is to guarantee employees complete freedom to organize—freedom from employer interference. This Act was passed, as the Government asserts, 'to put an end to the harmful consequences of * * * individual dealing between large carriers and small employees. *Machinists* v. *Street*, 367 U.S. 740, 760; *Virginian Ry.* v. *Federation*, 300 U.S. 515, 553; *Texas & N. O. R. Co.* v. *Brotherhood of Railway and Steamship Clerks*, 281 U.S. 548, 570. United's obligation under the Act is *not 'to interfere in any way with the organization of its employees.'* Railway Labor Act, § 2, Fourth. (Emphasis added.) And this obligation includes refraining from filing, or inspiring, litigation designed to block or delay representation elections conducted by the National Mediation Board."

The Association submits first, that the District Court lacked jurisdiction to entertain United's action for the reasons previously set forth in Point I of this argument; second, that the Mediation Board properly exercised its statutory authority in denying United's request to change the form of its ballot and hold a hearing to redetermine the craft or class of employees involved in the representation dispute for the reasons already discussed under Point II; and third, that, in any event, United lacked standing as a party in interest under the statute to challenge the craft composition or ballot form. This section of our argument is devoted to this third ground for opposing United's position.

As we understand United's position on the basis of its statements to the Mediation Board and arguments in the courts below, its claim of legal right to challenge the Board's craft composition is, in substance, grounded on its asserted economic interest in the way in which

the craft is formulated; its claim with respect to the Board's ballot arises from its interest in insuring that the certified representative is the "true representative" with which it must bargain.

The Mediation Board has consistently taken the position that a carrier cannot participate before it as a party in a representation proceeding under Section 2, Ninth because of the requirement under the Railway Labor Act that employees shall have complete freedom to organize without carrier influence, interference, or coercion.[14] On the other hand, the Board has frequently invited carriers to present their views when it holds a hearing to determine an appropriate craft or class. Consistent with this position the Board advised United in the instant proceedings that it was not a party to the representation dispute (United R. 65) which United subsequently admitted it was not (United R. 67). United contended, however, that it had a legitimate interest in the scope of the craft and form of ballot and a right to be heard thereon (United R. 67) and the Board replied that it would welcome an expression of the carrier's views even though it did not recognize it as a party to the representation dispute (United R. 85). The action of the Mediation Board thus cannot be attacked in this case on the ground that it refused to consider United's position.

Despite the foregoing facts of record, United contended in the courts below that it had standing to complain of the Board's refusal to re-determine an already constituted craft or class and the Board's form of ballot to be used in the representation election. If United's claims were recognized by the courts, then every carrier faced with a representation election could

[14] National Mediation Board's 28th Annual Report (1962) pages 31-32.

demand a hearing from the Mediation Board to determine the scope of the craft of employees involved regardless of any prior determinations of the Board and thus defeat the basic purpose of the Railway Labor Act to resolve disputes expeditiously and thereby avoid interruptions to commerce. For example, Section 2, Ninth contemplates that the Board shall designate a bargaining representative "within 30 days after receipt of the invocation of its service." In the present case United's demands upon the Board, supplemented by those of ABNE, have resulted in a delay of two years since the representation election was scheduled by the Board to be conducted on approximately December 19, 1962.

An analysis of the relevant provisions of the Railway Labor Act clearly justifies the Board's denial of standing in United to contest the issues raised by that carrier and supports its determination to get on with the job of resolving the representation dispute. Section 2, Fourth of the statute, 45 U.S.C. § 152, Fourth, totally excludes carriers from any interest or activity with respect to representation of employees for the purpose of collective bargaining under the statute. In pertinent part it states:

> "No carrier, its officers, or agents shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees . . ."

Similarly, Section 2, Third (45 U.S.C. § 152, Third) provides that representatives "shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall inter-

fere with, influence, or coerce the other in its choice of representatives." Further, Section 2, Ninth repeats the admonition and obligates the Mediation Board to conduct its representation election "in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercisd by the carrier."

The matters about which United here complains involve solely rights of the employees, not those of the carrier. In the *Virginian* case, *supra*, this Court held that a carrier may not so complain (300 U.S. 515 at 558).[15]

CONCLUSION

For the foregoing reasons the judgment of the Court of Appeals in No. 138 and No. 369 should be reversed and the judgment in No. 139 should be affirmed.

Respectfully submitted,

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[15] Unlike the National Labor Relations Act where employers as well as employees are expressly granted a role in the resolution of representation disputes and where either may file petitions (29 U.S.C. § 159), this is clearly not the case under the Railway Labor Act as shown above.